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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/390,625	09/07/1999	BROCK WALKER	PM-223529	7261

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DAVIDSON BERQUIST JACKSON & GOWDEY LLP  
4300 WILSON BLVD., 7TH FLOOR  
ARLINGTON, VA 22203

EXAMINER

BROWN, MICHAEL A

ART UNIT PAPER NUMBER

3772

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/390,625

Applicant(s)

WALKER, BROCK

Examiner

Michael Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13, 15-21 and 23-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 10-13, 27 and 38 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-7, 15-16, 19-21, 23-26, 28-29, 32-35 and 37 is/are rejected.
- 7) ☒ Claim(s) 8, 9, 17, 18, 30, 31 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-7, 15-16, 19-21, 23-26, 28, 32, 34 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Perkins.

Perkins discloses in figures 1-5 a portable sacral support comprising a main body 10, having a plurality of central portions 15, having a first compression valve (greater density, col. 2, lines 24-25), lesser compression areas 26, (col. 2, lines 23-25) adjacent the central portion, the main body is made of a molded material (plastic), the main body is an integral one piece structure, the compressive support of the central portion is variable (the plastic supports are made of different density, col. 2, lines 20), a spacer member, (the two vertical extending portions of 20), end portions (the top and bottom of the body each including a thickened portion), the compressive support (the device is resilient) of the central portion is variable (it can be made of various densities of foam), the end portion includes at least one thickened portion (fig. 3), the end portion extends beyond the central portion (the central portion is interpreted as being 15, the ends (fig. 3), are located extends beyond the portions 15), the open cell foam (col. 2, lines 20-24), provides dimples spaced across a portion of the front surface. The open cells provide through holes that extend through a portion of the main and the central portion further includes a rearwardly protruding lower portion (fig. 3). The bottom having a rear portion

that is angled (fig. 3), with respect to the front portion, the main body includes a curved surface (fig. 3), the material is a durable foam (polyurethane) foam and a self-skinning foam 30.

### ***Claim Rejections - 35 USC § 103***

Claims 29, 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins.

Perkins discloses in figures 1-5 a portable sacral support, substantially as claimed. However, Perkins doesn't disclose what force the support provides. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the central portion and the support could be used to provide certain forces that could include 2 psi to 4 psi because Perkins teaches different densities and different density would determine what psi is provides.

### ***Allowable Subject Matter***

Claims 8-9, 17-18, 30-31 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5, 10-13 27 and 38 are allowed.

### ***Response to Arguments***

Applicant's arguments filed July 12, 2006 have been fully considered but they are not persuasive. Applicant argues that Perkins mentions only a lumob-scral lower member not a sacral support member. However, the device disclosed by Perkins is used to support the sacral and it is portable. Applicant argues that Perkins doesn't

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disclose a central portion for dealing with the sacral because the prior art extends beyond the sacral. However, the present invention lacking extension beyond the sacral doesn't provide any novelty over Perkins. Clearly Perkins deals with the sacral. Whether Perkins extends beyond the sacral doesn't preclude the reference from reading on claims that extend to only the sacral. Also the claims don't require the device to only cover the sacral. Applicant argues that Perkins isn't restricted to applying a compression force to the sacral. However, Perkins provides a first compression force that is applied to the sacral. Once again, whether the compression force is also applied to the upper back or the buttock is irrelevant. Applicant argues that there is no disclosure of having a central area having one compression force and adjacent areas having less compression force. However, Perkins discloses a central area made of a specific density ( which makes it capable of applying a compression force). Perkins also discloses two adjacent areas (26), that are made of less density and stiffness material. Thus, being capable of providing less compression force. The less density material will provide less force versus the more density material would provide more force. Applicant argues that there is no disclosure the central portion is variable. However, Perkins discloses that all the supports can be made of different densities. All of the supports include the central portion. Being able to make the central portion of different densities makes it variable. Note: Some of the arguments are moot because the amendment to the claims necessitated a new rejection. Thus, no arguments pertaining to the Brook reference will be made in this rejection. The prior art foam is the same foam recited in the specification of the present invention.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

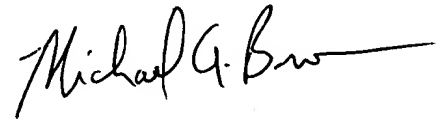
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
October 1, 2006

A handwritten signature in black ink, appearing to read "Michael A. Brown", with a long horizontal stroke extending to the right.

MICHAEL A. BROWN  
PRIMARY EXAMINER